Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK
No.

IN THE

Supreme Court of the United States

October Term, 1996

James H. Dickey, Petitioner

v.

City of Hartsville, et. al., Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

James H. Dickey, Esq.
Post Office Box 2405
Atlanta, Georgia 30301
(404) 577-3817

45 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not the Clerk (Deputy) of the U.S. District Court has the power and authority to direct reassignment of cases to a particular Judge over the motion and objection of a party after the litigation proceedings has commenced; and does such a reassignment without an official order of the Court violate the procedural due process and equal protection clause of the United States Constitution?

2. Whether or not the assignee Judge is authorized to act without an official order of the Court to rule on his reassignment and then proceed to dispose of all pending motions in an action where litigation proceedings has already commenced; and in a manner that creates the appearance of impropriety and undue prejudice to a suspect class.

3. Whether or not the appellate Courts should decline to interfere with the local management practice of the District Court under circumstances where the local practice violates the procedural due process and Equal Protection Clause of the U. S. Constitution; and the alleged conduct of improper reassignment after litigation has commenced is in further conflict with the binding precedent of the Federal Court.

4. Whether or not a Supervisory Writ should issue to limit the District Court Officers and its personnel to the lawful exercise of their jurisdiction and authority in a manner consistent with the fair and impartial administration of justice via the Judicial Improvement Act of 1990, 28 U.S.C.A. Section 471; 28 U.S.C.A. Section 294-296, under circumstances where a scheduling order of the Court has been pronounced for the case to proceed to trial on a date certain.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

PETITIONER: James H. Dickey D.B.A. Dickey's Business Enterprise; proceeding Pro se; Post Office Box 2405, Atlanta, Georgia 30301

RESPONDENTS: The City of Hartsville, Members of the City Council, Willie D. Herbert, individually and in his official capacity as City Building Inspector, Business License Inspector of the City of Hartsville, William F. Bruton, Jr., individually and in his official capacity as City Manager of the City of Hartsville, and Matt Canarella, individually and as Mayor of the City of Hartsville, all members of City Council for the City of Hartsville during the 1991-1996 Term Year(s).

The Attorneys of Record are L. Hunter Limbaugh and Robert T. King, the law office of Willcox, McLeod, Buyck, Baker & Williams, P.A., Post Office Box 1909, Florence, S.C. 29503.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

James H. Dickey, Petitioner

v.

City of Hartsville, et. al., Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

James H. Dickey, the petitioner herein, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered on September 24, 1996; the Petition for Rehearing with Suggestion For Rehearing in Banc in this matter denied on October 21, 1996.

OPINIONS BELOW

The September 24, 1996 unpublished per curiam opinion of the Court of Appeals No. 96-1425, whose judgment is herein sought to be reviewed is represented and provided in the separate appendix to the petition, p. 12. The petition for rehearing with suggestion for rehearing in banc, filed on October 21, 1996 is reprinted in the separate appendix to this petition p. 15.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on September 24, 1996. The petition for Rehearing was denied and entered on October 21, 1996. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. 1254(1).

CONSTITUTIONAL AND STATUTORY REGULATIONS INVOLVED

This case involves Section 294-296 of the United States Code regarding the power of assignment of retired Justices or Judges to active duty; and may be found at 28 U.S.C.A. Section 294-296. In pertinent part the Code requires:

> "that no retired Justice or Judge shall perform judicial duties except when designated and assigned by the Chief Judge or Judicial Council of his circuit."

This case involves section 471-82 of the Judicial Improvement Act of 1990; which may be found at 28 U.S.C. A. Section 471-482; and in pertinent parts requires:

> "that each United States District Court implement a plan.....to facilitate deliberate adjudication of a civil case on the merits...improve litigation management and ensure just, speedy, and inexpensive resolution of civil disputes."

This case also involves the first section of the Fourteenth Amendment of the Constitution of the United States, which provides as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal of protection of laws."

STATEMENT OF THE CASE

The facts necessary for an understanding of the issues presented by this petition are as follows: On May 11, 1993 this Civil Rights, 42 U.S.C.A. Section 1983 and 1985 etc. action was filed in the United States District Court - South Carolina. This action was randomly assigned to a United States District Court Judge who is experienced in Civil Rights litigation and who took control of the Pre-Trial proceedings from the Magistrate Judge in 1994. Said Judge ordered the case ready for trial before him for February 1, 1996 and all dispositive motions filed by January 1, 1996. Several prior motions for dismissal, discovery, etc. had already been decided by the assigned Judge whose orders were only pronounced and directed from the bench. Approximately 21 days before the date set for trial before the assigned Judge this action was purportedly reassigned to a newly appointed Judge; notwithstanding the continued hearing of cases by the assigned Judge.

Petitioner filed a motion against reassignment (without any knowledge of the assignee Judge) asserting as a basis undue prejudice and the appearance of impropriety. Petitioner specifically requested the Clerk of Court to set this motion for a hearing before

the original assigned and/or appropriate Judge prior to any subsequent proceedings in this case.

The petitioner subsequently received an unsigned and undated notice letter of reassignment to another Judge. Thereafter, Defendants in the case filed a dispositive motion for summary judgment before the reassigned Judge at least two weeks after the ordered deadline in which dispositive motions were to be filed. The Clerk of Court, in the interim, set the case for trial before the reassigned Judge without scheduling a hearing on petitioner's motion against reassignment and thereafter set the case on the reassigned Judge's motion calendar for summary judgment with less than 5 days notice to the petitioner. The respondent Judge therein proceeded to hear and dispose of all pending motions including petitioner's motion against reassignment while noting from the Bench that he had no power and authority regarding the issue of reassignment. The assignee Judge therein denied petitioner's motion against reassignment, denied petitioner's motion for recusal and denied petitioner's motion for continuance for purposes of filing for a supervisory writ.

The petitioner in response to the reassignment and the Court proceedings filed a petition for a Writ of Mandamus and a Writ of Prohibition with the United States Court of Appeals for the Fourth Circuit. The petition requested as relief that the Court direct the Honorable newly appointed Judge to discontinue further proceedings and vacate his orders until the motion and issue regarding reassignment is properly disposed of according to law. The Court of Appeals responded with a per curiam opinion which addressed only the issue of a motion for Recusal and noted that it would not interfere with the local management practice of the District Court. Upon denial of petitioner's request for a rehearing, this petition for Writ of Review to the Supreme Court follows.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to resolve conflict in principle regarding the random assignment of cases; and eliminate the potential for improper reassignment of cases by Judicial officers without authority.

The Federal Court and Court of Appeals in other circuits have made it clear that reassignment of cases cannot be arbitrarily or unilaterally made without order and approval of some random selection process by the Chief Judge and/or Judicial Council. See, U.S. v. Garrison, 340 F. Supp. 952 (D.C. La 1972); and Utah Idaho Sugar Co. v. Ritter, 461 F. 2d 1100 (C.A. Utah 1972).

The issue in this case is whether the Clerk of Court and assignee Judge are exceeding their judicial authority to reassign a case after litigation proceedings has commenced in a systematic and deliberate manner to deny a pro se litigant fair access to the Judicial process, and whether such conduct serves to deny a pro se litigant his constitutional right to procedural due process and equal protection under the law. Too often pro se litigants are induced to litigate their own cases which may have merit because of the financial inability to hire a lawyer to pursue his or her cause, particularly in the areas of Civil Rights litigation.

There is a growing problem with Court officials engaging in improper conduct not subject to clear appellate review and exceeding their Judicial authority in a manner that prohibits equal access to the Courts by all United States Citizens. This conduct is causing certain minority groups to be decidedly disadvantaged in their pursuit of justice via procedural due process and equal protection under the law to which the petitioner is a member of a suspect class. More often than not the Clerk of Court and Supervising Court officials in the South are dominated by the white race. Unfortunately, racial bias is deeply embedded in the south

and as such the white race has an inherent advantage in the fair and impartial administration of Justice unless the rules of court and procedures are fairly and consistently adhered to.

In the case at bar, the Federal District Court of South Carolina has been called upon to preside over a civil rights lawsuit involving a long history of institutionalized discrimination against black minority businesses by local rural government officials and municipalities. This is particularly evident when it involves the assignment and use of Federal grant funds. In light of these conditions an exceptional case of public interest to the entire U.S. was filed by this petitioner and randomly assigned to a Judge experienced in Civil Rights litigation. However, unusual events took place a few weeks before the scheduled trial of this case such that the entire case was reassigned without order of the Court to a new and inexperienced District Judge over the objection of this petitioner. Said judge then proceeded to hear dispositive motions of respondents in contravention to the scheduling order of the Court without leave or request for leave to file out of time motions.

Historically, Court officials have been allowed to exceed the boundary of their authority without immediate redress by the Appellate Court; and not until the matter and issue becomes moot and therefore not subject to further appellate review. Accordingly, the damage in terms of delays and increase cost of litigation is irreparable; and to a pro se litigant the cost is so great that Justice cannot be afforded, and access to Justice through the litigation process is therefore merely an illusion. This court's review is necessary to prohibit the selective application and enforcement of the Federal Court Rules and Procedure in a discriminatory manner.

The current court systems can not be fair and just to all parties until these tangible inequalities are remedied by the Appellate and Supreme Court through supervisory writs of instructions to the lower Courts that will safeguard and protect the integrity of the Federal Court System. Such a writ of review is

necessary in this case.

II.

Certiorari should be granted to resolve the conflict between a published opinion of the District Court and the unpublished opinion of the Court of Appeals for the Fourth Circuit.

In the case at bar, the District Court in a published opinion has previously decided that once a Federal Judge has commenced litigation proceedings in a particular action he should not abandon the cause unless required by law. **Duplan Corporation v. Deering Miliken, Inc.,** 400 F. Supp. 497 (D.C.S.C. 1975). In this case a motion against reassignment was presented before the reassigned Judge presided in any matters at issue. However, the Clerk (Deputy) of Court without scheduling a hearing on this motion proceeded without authority to assign petitioner's case to the reassigned Judge and schedule out of time motions by the respondents. The Federal Courts have been clear that a Judge owes it to his oath of office and to the litigants to not withdraw from the case after the commencement of proceedings unless required by law. U.S. v. Orbiz, 366 F. Supp. 628 (D.C. Puerto Rico 1973).

The Federal Courts have further stated that all cases should be allotted to Judges on a random basis and it should never be of any moment to a Judge as to whether or not he sets on a particular case. U.S. v. Garrison, 340 F. Supp. 952, (1972). There currently exist harmful inequalities in the Court System as stated above, which when coupled with the claim of racial discrimination amplifies the personal attitudes of various Court personnel who may or may not believe and care that racial problems are still deeply embedded in the rural communities of the south. Their personal attitudes (good or bad) should never be given an opportunity to

influence the outcome of a Civil Rights action without appropriate appellate review. Thus improper reassignment of a Case after the litigation process has commenced should be given close scrutiny by this Court. See, Duplan Corp. Id.

The Court of Appeals have failed to give careful review of the power and authority of the District Court Clerk to reassign petitioner's case while a motion against reassignment was pending. The Court of Appeals provided an unpublished opinion that never addressed the salient issues which are the subject for review in this petition for a writ of mandamus and prohibition. This unpublished opinion which is not binding in the Circuit should not serve as the final ruling in a matter wherein there is a published opinion which is in conflict. Thus a writ of review is necessary in this case.

III

Certiorari should be granted to prevent and prohibit the systematic violation of procedural due process and the equal protection clause by Federal Court officials.

A systematic pattern of racial divide continue to exist in this country which does not exempt Court officials and personnel from the insidious process of aiding and abetting in the economic disparity and racial discrimination in this country. Small businesses continue to be the back bone of this country wherein communities and groups of people are shaped and/or are able to shake off the vestiges of past discrimination to make sweeping changes and developments in their communities from one generation to the next. These developments are continually threaten by certain individuals entrusted with the fair and impartial administration of justice, who nevertheless find loopholes in our Court system to assist in the continuation of racial divide. These loopholes must be eliminated

to shut down the systematic violation of the procedural due process and unequal administration of justice by those who in their official capacity choose to manipulate wrongfully the judicial process. In the case at bar, the petitioner like some minorities had sufficient capital to commence his business; however for Black minority businesses capitalization of their business ventures is not enough, they are required continually to confront the institutionalized discrimination of local government and court officials in the rural communities who simply act out their prejudices through their public office. Their are still individuals who have the utmost contempt for civil rights law. Their total disregard for the laws against racial discrimination includes the laws regarding procedural due process and equal protection by even the more responsible citizens and officials of the court. Therefore, as a result of some governmental officials contempt for Civil Rights laws, Black minority groups who have just enough capital to start and successfully run their business for a year or two are saddled with the discriminatory techniques of city government officials in small rural towns that creates the additional burden and costs of litigation expenses merely to exert their basic right to pursue their livelihood. The Equal Protection and Due Process clause of the U. S. Constitution requires that... "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of laws." When corrupt officials are able to orchestrate procedural the outcome of a claim and then have on standby with the taxpayer funds, high price law firms to orchestrate road blocks to the justice and Court system by various techniques which sometimes approaches unethical conduct the call for justice is denied. This means that our Federal Courts must look closely at enforcing the rules and procedures of the Court which guarantees fair and equal access to the Court by all

of these United States.

This Court is now called upon to review the conduct of the various court officials vested with the public trust and employed to be guardians of our constitution and judiciary. To this end the United States Court of Appeals for the Fourth Circuit failed to respond to the very issues placed before the Court via an unpublished opinion which never address the issues of reassignment of cases after the litigation process has commenced. Had the appellate Court considered the proper issues before it, the Court would be hard-pressed to establish a sound legal basis for the reassignment of cases where the litigation proceeding had already commenced from a Judge that is still active on the bench and qualified to continue the proceedings until final resolution. This matter should be of special concern to this Court's view of public confidence in the Courts and laws we purport to defend. It is highly unusual to have a case transferred to a less experienced Judge who, permits the more popular Defendants to file without leave dispositive motions contrary to the District Court's standing order while the assigned Judge is still active on the bench..

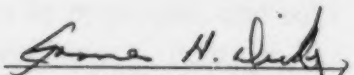
This Supreme Court is now called upon to consider this certiorari and petition for a Supervisory Writ of Mandamus, which appears to be one of first instance to this Court in need of resolution to guide the District Court's practice of reassignment of cases after litigation has commenced; and to safeguard the constitutional guaranteeof due process and equal protection for the fair and efficient administration of justice.

CONCLUSION

For all the foregoing reasons above, petitioner respectfully prays that a Writ of Certiorari be granted and that a Supervisory Writ of Mandamus issue to the lower Court to vacate all orders

subsequent to the reassignment of the petitioners case until resolution regarding reassignment is made in accordance with the law.

Respectfully submitted,



James H. Dickey, Esquire
Petitioner - Pro Se

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-1425

In Re: JAMES H. DICKEY, Petitioner.

On Petition for Writ of Mandamus. (CA-93-1117-3)

Submitted: September 10, 1996 Decided: September 24, 1996

Before WILKINS, HAMILTON, and LUTTIG, Circuit Judges.

Petition denied by unpublished per curiam opinion.

James H. Dickey, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36 (c).

PER CURIAM:

James Dickey petitions this court for a Writ of Mandamus directing that his action under 42 U.S. C. A Section 1983 (1988), be reassigned from Judge Patrick Duffy to Judge Mathew Perry, who was originally assigned to his case. He also requests that the district court clerk be prohibited from further reassigning his case until some "random selection process" can be employed, and asks that Judge Duffy also be directed to vacate every order he has entered in his case. Dickey's petition follows Judge Duffy's denial of Dickey's motion requesting that Judge Duffy recuse himself.

A party seeking mandamus relief must show that he has no other means of relief and that his right to the relief he seeks is "clear and indisputable." See In re Beard, 811 F. 2d 818, 826 (4th Cir. 1987). We find that Dickey has failed to provide any legitimate basis for his contentions that Judge Duffy should not be permitted to decide his case. Dickey asserts that the reassignment of his case to Judge Duffy has prejudiced him and results in the appearance of impropriety. If he is claiming that Judge Duffy is somehow biased against him, he has not identified any extrajudicial source for that bias, as he must do in order to obtain mandamus relief. Id. at 827.

Dickey also claims that the reassignment was administratively improper. He contends that the district court clerk lacked the authority to reassign his case, that the reassignment process was not random, and that reassignment to Judge Duffy is problematic because Judge Perry had already issued pretrial rulings in his case, the basis for which Judge Duffy was unfamiliar. Dickey, however, has provided no authority to support his claims of impropriety, and we decline to interfere with the district court's case management practices.

Accordingly, the petition for a Writ of Mandamus is denied.

PETITION DENIED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 21, 1996

No. 96-1425
CA-93-117-3

In Re: JAMES H. DICKEY

Petitioner

On Petition for Rehearing with Suggestion for Rehearing In Banc

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The petitioner's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/ Patricia S. Conner

CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Richmond, Va.

IN RE: JAMES H. DICKEY	*
	* **PETITION FOR**
	* **WRIT OF MANDAMUS**
	* **AND/OR WRIT OF**
Petitioner.	* **PROHIBITION**
	*
	*

The above-named petitioner, Plaintiff in civil case no. 3:93-1117. OBD (23), captioned as Dickey vs. City of Hartsville, et. al in the United States District Court, District of South Carolina - Columbia Division herein applies pursuant to Section 1651, title 28, United States Code, and Rule 21 of the Federal Rules of Appellate Procedure for a writ of mandamus and/or for a writ of prohibition directing the Clerk of Court to stop directing this case to the Honorable Judge Duffy and directing the Honorable Judge, of the United States District Court to discontinue further proceedings and vacate all orders rendered by him in the foregoing action as of January 5, 1996. In support of this application petitioner states:

ORDER AND OPINION

On March 25, 1996, the Honorable Judge entered an order, in follow-up to his pronouncement issued in Court on March 22, 1996, denying petitioner's motion for recusal and refusal of

reassignment, and denying motion for continuance. Such orders are set forth in Exhibits #1A and #1B and is attached hereto as the complete and only order of the respondents as of the date of this petition.

STATEMENT OF FACTS

The facts necessary for an understanding of the issues presented by this application are as follows: On May 11, 1993 this Civil Rights, 42 U.S.C.S. Section 1983 and 1985 etc. action was filed in the United States District Court - South Carolina. This action was randomly assigned to a United States District Court Judge who is experienced in Civil Rights litigation and who took control of the Pre-Trial proceedings from the Magistrate Judge in 1994. Said Judge ordered the case ready for trial before him for February 1, 1996 (See Exhibit #3). Several prior motions for dismissal, discovery, etc. had already been decided by the assigned Judge whose orders were only pronounced and directed from the bench. Approximately 21 days before the date set for trial before the assigned Judge this action was purportedly reassigned to the newly appointed respondent Judge; notwithstanding the continued hearing of cases by the assigned senior Judge. In September, 1995 Defendants filed a motion to compel, which on January 5, 1996 was set for a hearing before the assigned Judge (See Exhibit #4).

Petitioner filed a motion against reassignment (without any knowledge of the assignee Judge) asserting as a basis undue prejudice and the appearance impropriety (See Exhibit #5). Petitioner specifically requested the Clerk of Court to set this motion for a hearing before the original assigned and/or appropriate Judge prior to any subsequent proceedings in this case.

The petitioner subsequently received an unsigned and undated notice letter of reassignment to respondent Judge. (See Exhibit #6). Thereafter, Defendants in the case filed a dispositive motion for summary judgment before the reassigned Judge two weeks after the ordered deadline for dispositive motions were to be filed (See Exhibit #7). The Clerk of Court (respondent), in the interim, set this case for trial before the reassigned Judge without a hearing on petitioner's motion against reassignment and thereafter set this case on the reassigned Judge (respondent) motion calendar with less than 5 days notice to petitioner (See Exhibit #8). The respondent Judge therein proceeded to hear and dispose of all pending motions while noting from the bench that he had no power and authority regarding the issue of reassignment. The respondent Judge therein denied petitioner's motion against reassignment, denied petitioner's motion for recusal and denied petitioner's motion for continuance for purposes of filing this writ before continuing any further proceedings.

STATEMENT OF ISSUES

The issues presented herein are as follows:

A. Whether or not the Clerk of Court may direct reassignment of cases over motion and objection of a party to particular Judge which does not represent a random selection process and order of the appropriate Judge and/or Court.

B. Whether or not the assignee Judge may proceed to dispose of all pending motions and conduct further proceedings in a reassigned case over the motion and objection to reassignment (and/or motion for recusal) of a party based upon undue prejudice and appearance of impropriety prior

to a hearing and order of the appropriate Judge and/or Court.

RELIEF SOUGHT

The relief sought by petitioner herein is as follows:

A. Issue a writ of mandamus directing the Clerk of Court to return this case to the trial calendar of the Judge originally assigned for further proceeding.
B. Issue a writ of prohibition to prohibit the Clerk of Court and District Court Judges from reassignment of this case until there is an ordered random selection process and a manner of reassignment that does not prejudice or give rise to an appearance of impropriety.
C. Issue a writ of mandamus and/or writ of prohibition directing the assignee Judge to vacate his prior orders and discontinue taking further judicial action with respect to this case until the issue of reassignment is properly resolved according to law.

REASONS WHY WRIT SHOULD ISSUE

The Petitioner herein assert under the well-recognized constitutional doctrine and clause of equal protection and due process his right to a tribunal free from bias or prejudices in the administration of Justice; and free from the administration of the

courts business is such a manner that creates undue prejudices and an appearance of impropriety.

Pursuant to 28 U.S.C. Section 1651(A) and Rule 21 FRAP petitioner may request these writs (perhaps in a supervisory capacity) to confine the District Court to the lawful exercise of its prescribed jurisdiction and to compel the court to exercise its proper authority when it has a duty to do so.

The writ should be issued in this case because the petitioner can clearly and indisputably demonstrate that:

A. This case involves exceptional circumstances amounting to Judicial usurpation of power in such a manner that protection of this court's prospective appellate review is necessary.

B. District Court officers are acting beyond the apparent scope of their authority/jurisdiction and petitioner has no other forum or adequate remedy to protect his case from irreparable harm.

C. District Court officers have a duty to refrain from further proceedings in this case until petitioner's motion and right to a hearing before the appropriate authority or Judge is considered and ruled upon.

The illustration of an exceptional circumstance in this case, inter alia, flows from the prior rulings of the original assigned Judge wherein all orders were directed from the bench and subject to review only upon request for transcript and/or review of docket (See Exhibit #20). The order that all future proceedings would be before the assigned District Judge, who would be familiar with the basis for his prior ruling, relaxed the usual procedural requirement for reducing orders to writings (e.g. publish) which would be subject to appellate review.

The reassignment in the instant case does not reflect an

official order of the Court and Judge, and thereby operates as a reassignment by the Clerk of court beyond its jurisdiction and powers. This reassignment is contrary to the prior pronounced order of the assigned Judge, and as with other prior rulings of this court would not be subject to prospective appellate review. The Clerk of Court's apparent assumption of this judicial power and jurisdiction is not authorized by law and would not be subject to clear appellate review under the ordinary course of appeal. Therefore, petitioner respectfully request this writ.

The illustration that the District Court Officer are acting beyond the apparent scope of authority and jurisdiction may be found in the transcript of the motion hearings held on March 22, 1996 before the reassigned Judge (respondent). The Honorable respondent Judge acknowledged in open court that he had no power and jurisdiction regarding the reassignment of the instant case, but then proceeded to rule on the motion against reassignment in contravention to the very power and jurisdiction the respondent cited that he did not have. (Transcript will be requested upon subsequent request for brief, if needed).

Petitioner specifically requested that said motion against reassignment be submitted to the original assigned Judge who would have the power and jurisdiction to rule upon the motion. However, in violation of petitioner's right to be heard before the appropriate Judge, said request was apparently denied without official order of the Court. Petitioner has no other forum or adequate remedy to protect his case from the irreparable harm permitted by reassignment such as where respondent Judge has proceeded to entertain a dispositive motion of Defendant's for summary judgment in violation of the scheduling order of the assigned Judge. (See Exhibit #3 and #9).

The respondent Judge apparent decision to take the summary judgment motion under advisement demonstrates that he continues to proceed in excess of his jurisdiction to sit as Judge in

this action while petitioner's motion against reassignment has not been properly heard and ruled upon. Thus petitioner request for this writ is necessary.

The illustration that the District Court officers (respondents) have a duty to refrain from further proceedings in this case until petitioner's right to a hearing before the appropriate authority or judge is demonstrated by the conduct of the Clerk to assign petitioner's case and pending motion to the assignee Judge (respondent) and the assignee Judge conducting further proceedings over petitioner's objection and motion for hearing prior to an order and ruling by the appropriate Judge and/or authority. The District Court Officers (respondents) have a duty to not engage in conduct prejudicial to the effective, just, inexpensive and expeditious administration of the business of the Courts. Petitioner timely and promptly filed his motion against reassignment before any notice of the assignee Judge was sent to plaintiff (Exhibit #6). Notwithstanding petitioner's motions, respondents continued to go forward with the reassignment of petitioner's case without directing to the appropriate authority a hearing to determine the appropriateness of reassignment under the particular circumstances of plaintiff's claim. Until such time that a determination is made on the appropriateness of reassignment of petitioner's case, the District Court Officers (respondents) should refrain from further proceedings on any other matter which may be prejudicial to the effective, just and expeditious administration of the courts business. Thus this writ is required.

A writ is mandated under the current circumstances to limit this District Court Officers to the lawful exercise of its jurisdiction and to require the court to exercise its judicial authority and provide a proper hearing on petitioner's motion against reassignment. This court should further note that once a case has been randomly assigned, a Judge/Court owes it to the oath of office and to the litigants who are the subjects of the jurisdiction of the

court over which the Judge has regularly presided to not abandon or be abandoned from the position assigned to him unless required by law U. S. vs. Orbiz, 366 F. Supp. 628 (D.C. Puerto Rico, 1973). This argument is particularly true in light of the potential undue prejudice and appearance of impropriety which may result under the particular circumstance.

The petitioner herein submits that this case is of the particular instance where the original assigned Judge is duty bound to remain as Judge in the case. The Judge originally assigned to this case is an experienced Judge in the area which is the subject matter of this litigation. Said Judge have been substantially involved in prior motions in the instant case and have directed from the bench orders regarding the trial of this matter before him. Said Judge continues to be actively involved in the hearing and presiding of cases he was originally assigned, and thus there should be no compelling reason to argue against plaintiff's motion against reassignment in this particular instance.

EXHIBITS

The following exhibits and excerpts of the record are included to assist this court in the understanding of the necessity for this petition. Attached hereto as exhibits and incorporated by reference herein are Exhibits 1 through 10, which are set forth below.

CONCLUSION

There is no compelling reason for the petitioner's case to be reassigned over the objection of any real party in interest and over

the prejudicial effect and appearance of impropriety which may result therefrom. Therefore and for the reasons stated above, Petitioner respectfully pray that this court grant his request for a writ of mandamus and/or writ of prohibition to the District Court of South Carolina, the Honorable Clerk of Court and Honorable respondent Judges, and for such other relief as this court deems proper.

Respectfully submitted,

_____

James H. Dickey
Petitioner, Pro Se

This _____ day of April, 1996.

Atlanta, GA

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Richmond, Va.

No. 96-1425

IN RE: JAMES H. DICKEY	*
	* **PETITION FOR**
	* **REHEARING AND**
	* **SUGGESTION**
Petitioner.	* **THAT REHEARING**
	* **BE IN BANC**
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The above-named petitioner, Plaintiff in Civil Case No. 3:93-1117.OBD (23), petitions this Court for a rehearing to reconsider the judgment entered in this action on September 24, 1996.

INTRODUCTORY STATEMENT AND PURPOSE

Petitioner files this petition and suggestion for rehearing to demonstrate that in his judgment material facts and law were overlooked in the decision, and that the material issues before the court which are the basis for this Petition for a Writ of Mandamus and/or Prohibition were not disposed of.

GROUNDS FOR REHEARING

The grounds for rehearing are as follows:

I. The per curiam opinion of the court appears to misapprehend the issue of whether to issue a Writ of Mandamus for reassignment back to a previous Judge based on a claim of bias against the assignee Judge Duffy.

Petitioner does not attempt to show bias on the part of the Honorable Judge Duffy - assignee. Petitioner seeks to set forth facts to demonstrate that reassignment in this particular case is improper in light of the court's scheduling order and commencement of proceedings. The argument and issues are set forth against reassignment in a manner that prejudices petitioner's case, and thereby is contrary to the fair and impartial administration of justice; (e.g. extensions of ordered deadlines for filing dispositive motions and trial delays).

II. The per curiam opinion of the court does not address the salient issue of whether a deputy Clerk of Court has the power to reassign petitioner's case to a particular Judge contrary to the scheduling order of the court.

The court does not address the fact that a scheduling order was set for petitioner's case to proceed to trial before the assigned Judge Perry on a specified date. Absent an order of that Judge or the court's judicial council/panel, the Clerk of Court did not have the authority to reassign petitioner's case.

III. The per curiam opinion of the court appears to misapprehend that this petition flows from Judge Duffy's denial of petitioner's Motion for Recusal.

Petitioner seeks a supervisory Writ of Mandamus to prevent the enormous waste of judicial time and litigation expense; and to prevent Judge Duffy from proceeding in this matter until reassignment is properly authorized. Petitioner submitted exhibits to the court of material facts in the record to demonstrate that after a long history of rulings by Judge Perry and the close proximity of the case to the ordered trial date that a Federal Judge had already commenced proceedings in this action. In this instance any reassignment not required by law would be improper and in conflict with the fair and impartial administration of justice; thereby giving rise to an appearance of impropriety. See, U.S. v. Orbiz, 366 F. Supp. 628 (1973).

IV. The per curiam opinion of the court is in conflict with the published opinion of another court.

This Court has apparently labored, if at all, over the issue of whether to issue a Writ of Mandamus, and interfere with the District Court's case management practices by referring to the standards set forth in the case of In re Beard 811 F. 2d 818 (4th Cir. 1987). This case does not address the issues before this court. This court may have focused on the very least of petitioner's factual basis and arguments for issuing a Writ (i.e. Judge Duffy is unfamiliar with the prior rulings of Judge Perry) and overlooked the salient issue of whether reassignment of petitioner's case was initially proper under the circumstances. The Federal Court and Court of Appeals in other circuits have made it clear that reassignment of cases cannot be arbitrarily or unilaterally made without order and approval of some random selection process by the Chief Judge and/or Judicial Council. See, U.S. v. Garrison, 340 F. Supp. 952 (D.C. La 1972); and Utah Idaho Sugar Co. v. Ritter, 461 F. 2d 1100 (C.A. Utah 1972).

SUGGESTION FOR REHEARING IN BANC

In addition to the grounds set forth above, the Suggestion for Rehearing in Banc are as follows:

V. Thorough consideration by the full Court of Appeals is necessary to establish and maintain an uniform ruling by the court regarding the issues at bar.

The per curiam opinion of the court appear to give de minimis significance to the power and authority of the (deputy) Clerk of Court to reassign cases on the active Jury Roster absent an uniform random selection process and order of the court. This court's opinion declines to interfere with the District Court's case management practice which is the very essence of petitioner's claim of violation of his constitutional right to the fair and impartial administration of justice. In the case at bar, a supervisory Writ of Mandamus would serve to prevent the enormous waste of judicial time and also serve as a guide to District Court judges in their treatment of this unusual issue that is unlikely to present itself for traditional appellate review. See, e.g. In Re Virginia Electric & Power Co., 539 F. 2d 357 (4th Cir. 1976).

VI. The full Court of Appeals should give consideration to this proceeding because it involves a question of exceptional importance and direction for the District Court.

The per curiam opinion of the court does not address the issue of the Writ of Prohibition which concerns the power and authority of the Clerk of Court and assignee Judge to proceed beyond the scope of their powers over the objection of a litigant. It is a question of exceptional importance as to whether or not such officials are indeed vested with the power and authority to

unilaterally reassign cases to a particular Judge and proceed in a manner that calls into question the fair and impartial administration of justice consistent with the new Judicial Improvement Act of 1990, 28 U.S.C.A. Section 471-482.

VII. The full Court of Appeals should give careful consideration to this proceeding because it involves important issues surrounding an unusual set of circumstances wherein protection of this Court's prospective appellate review is necessary.

The per curiam opinion overlooks the fact that the assigned Judge Perry took control of the case, commenced proceedings, relaxed the usual procedural requirement for reducing his pre-trial orders to writings and pronounced that all future proceedings regarding this case would be before him. Any reassignment not required by law would be contrary to the prior order of the court, and would not be subject to clear appellate review under the ordinary course of appeal. The very power, consistent manner and jurisdiction of certain court personnel to assign and reassign cases after being placed on the trial roster should be important to this court's notion of substantive and procedural due process in this era of intense pre-trial litigation. See, e.g. In Re Virginia Electric & Power Company, 539 F. 2d 357 (4th Cir. 1976).

Further, this court offers the only available forum to redress these issues in the case at bar; and the petitioner's right to a fair and impartial administration of the court's business is clear and indisputable.

CONCLUSION

Therefore, for the reasons stated above, Petitioner respectfully request a rehearing and reconsideration of his petition for a writ of prohibition and/or mandamus in this case.

Respectfully submitted

James H. Dickey, Pro Se